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John Succi Contracting, Inc. d/b/a John Succi General Contractors a/k/a Succi, John General Contractors and JS Contractors and Builders, Inc. t/a Succi Contractors and Builders and Metropolitan Regional Council of Carpenters, Southeastern Pennsylvania, State of Delaware and Eastern Shore of Maryland. Case 4–CA–36427

June 29, 2011

## SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS BECKER, PEARCE, AND HAYES

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondents have failed to file an answer to the compliance specification.

On June 30, 2009, the Board issued a Decision and Order<sup>1</sup> that, among other things, found that Respondent John Succi Contracting, Inc. d/b/a John Succi General Contractors a/k/a Succi, John General Contractors (Respondent Succi) violated Section 8(a)(3) and (1) of the Act. The Board ordered Respondent Succi to, among other things, make whole discriminatees Joseph Perri, Kenneth Whittaker, and Matthew Whittaker for any loss of earnings and other benefits they may have suffered as a result of Respondent Succi's unfair labor practices. On June 9, 2010, the United States Court of Appeals for the Third Circuit entered its judgment<sup>3</sup> enforcing the Board's Order.

A controversy having arisen over the amount of backpay due, the Regional Director issued a compliance specification and notice of hearing on February 24, 2011, alleging the amounts due through the fourth quarter of 2010, under the Board's Order. Although not a party to the original unfair labor practice litigation, Respondent JS Contractors and Builders, Inc. t/a Succi Contractors and Builders (Respondent JS) was added to the compliance specification and was alleged to be jointly and severally liable for Respondent Succi's unfair labor practices, as an alter ego and disguised continuance of Respondent Succi, with substantially identical ownership, management, supervision, business purpose, operation, equipment, and customers.

The compliance specification notified the Respondents that they should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification and granted two extensions of time in which to file an answer, the Respondents failed to file an answer. By letter dated April 7, 2011, the Region reminded the Respondents of the need to file an answer to the compliance specification and indicated that if no answer was received by April 14, 2011, a motion for default judgment would be filed. The Respondents again failed to file an answer.

The compliance specification sets forth the following allegations in support of the allegation that Respondent JS is a disguised continuation of Respondent Succi, the entity previously found liable for the unfair labor practices involved herein. At all material times, and continuing until in or around January 2009, Respondent Succi was engaged in business as a general contractor providing construction services primarily for residential customers in the greater Bucks County, Pennsylvania area. About January 26, 2009, Respondent JS began engaging in business as a general contractor providing construction services primarily for residential customers in the greater Bucks County, Pennsylvania area. At all material times. John Succi has been the president, sole manager, and supervisor of Respondent Succi, owning 100 percent of its stock and exercising exclusive control of its operations and finances. Since the inception of Respondent JS, John Succi has been the vice president, sole supervisor for work performed, and a 49-percent stockowner of Respondent JS. At all material times, Corey Scott has been the president of Respondent JS and the owner of 51 percent of its stock.

Since the inception of Respondent JS, John Succi has exercised control over its operations and finances, including its bank accounts, collection and disbursement of all business-related revenue, day-to-day interactions and business relationships with customers, hiring, supervising and managing of employees and subcontractors, securing supplies, and overseeing all phases of the construction work. Respondent Succi employed Nelson Dominguez and Santos Vasquez as laborers until in or around December 2008 or January 2009. Dominguez and Vasquez were the last two employees known to have worked for Respondent Succi. In January 2009, after a brief interruption in their employment with Respondent Succi, Dominguez and Vasquez were employed by Respondent JS.

<sup>&</sup>lt;sup>1</sup> 354 NLRB No. 38.

 $<sup>^2</sup>$  Perri's surname was misspelled as "Perry" in the Board's Decision and Order.

<sup>&</sup>lt;sup>3</sup> No. 10-1570.

In November 2008, Respondent Succi began work on a project for a residential customer in Pipersville, Pennsylvania, and continued the work until in or around January 2009. Beginning in February 2009, Respondent JS continued the work that had been initiated by Respondent Succi on the Pipersville project. When Respondent JS began operation, it used the same handtools, scaffolding, and trucks used by Respondent Succi. In performing its construction business, Respondent JS utilizes the same type of equipment and tools that Respondent Succi used in the operation of its business. Since its inception, Respondent JS has used the services of the same accountant that performed services for Respondent Succi in 2008. Since its inception, Respondent JS has used the business phone number that had formerly been used by Respondent Succi.

Accordingly, the compliance specification alleges that since January 26, 2009, Respondent JS has been established as a disguised continuation of Respondent Succi, with substantially identical ownership, management, supervision, business purpose, operation, equipment, and customers. The compliance specification further alleges that based upon the conduct of its business operations as described, Respondent JS is the alter ego of Respondent Succi and thus is jointly and severally liable with Respondent Succi for fulfilling the remedial obligations set forth in the Board's enforced Order.

On April 20, 2011, the Acting General Counsel filed with the Board a motion for default judgment, with exhibits attached.<sup>4</sup> On April 20, 2011, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On May 17, 2011, a revised Notice to Show Cause issued, noting that the original notice had not been served on Respondent JS. The revised notice was served on Respondent JS. The Respondents failed to file a response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

## Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondents, despite having been advised of the filing requirements, have failed to file an answer to the compliance specification. In the absence of good cause for the Respondents' failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and we grant the Acting General Counsel's Motion for Default Judgment.

Based on the above, the compliance specification alleges, and we find, that JS Contractors and Builders, Inc. t/a Succi Contractors and Builders is a disguised continuation and an alter ego of Respondent John Succi Contracting, Inc. d/b/a John Succi General Contractors a/k/a Succi, John General Contractors with substantially identical ownership, management, supervision, business purpose, operation, equipment, and customers. As such, JS Contractors and Builders, Inc. t/a Succi Contractors and Builders is jointly and severally liable for remedying the unfair labor practices of John Succi Contracting, Inc. d/b/a John Succi General Contractors a/k/a Succi, John General Contractors. We further conclude that the net backpay due the discriminatees through the fourth quarter of 2010 is as stated in the compliance specification, and we will order the Respondents to pay those amounts to the discriminatees, plus additional backpay that may accrue in the absence of a valid offer of reinstatement, plus interest accrued to the date of payment.

## **ORDER**

The National Labor Relations Board orders that the Respondents, John Succi Contracting, Inc. d/b/a John Succi General Contractors a/k/a Succi, John General Contractors, Yardley, Pennsylvania, and its alter ego, JS Contractors and Builders, Inc. t/a Succi Contractors and Builders, Fairless Hills, Pennsylvania, and their officers, agents, successors, and assigns, shall jointly and severally make whole the individuals named below, by paying

<sup>&</sup>lt;sup>4</sup> The Acting General Counsel's Motion for Default Judgment and attached exhibits indicate that the Compliance Specification and Notice of Hearing was served by certified mail on the Respondents and their counsel. The copy of the compliance specification sent to John Succi, president, John Succi Contracting, Inc. d/b/a John Succi General Contractors was returned unclaimed. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See, e.g., I.C.E. Electric, Inc. 339 NLRB 247, 247 fn. 2 (2003), and cases cited therein. Further, the attached exhibits indicate that the copy of the compliance specification sent to John Succi, JS Contractors and Builders, Inc. t/a Succi Contractors and Builders was delivered.

them the amounts following their names, plus additional backpay that may accrue in the absence of a valid offer of reinstatement, plus interest accrued to the date of payment in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws. Summarizing these amounts, the Respondents are obligated to pay the employees backpay totaling, through the fourth quarter of 2010, \$49,674.93, plus additional backpay that may accrue in the absence of a valid offer of reinstatement, plus interest and minus withholdings.

Joseph Perri	\$25,993.43
Kenneth Whittaker	13,312.50

<sup>&</sup>lt;sup>5</sup> The Board has declined to apply its new policy, announced in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), of daily compounding of interest on backpay awards, in cases such as this, that were already in the compliance stage on the date that decision issued. *Rome Electrical Systems, Inc.*, 356 NLRB No. 38, slip op. at 1 fn. 2 (2010).

Matthew Whittaker 10,369.00 **TOTAL:** \$49,674.93

Dated, Washington, D.C. June 29, 2011

Craig Becker,	Member
Mark Gaston Pearce,	Member
Brian E. Haves.	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD